

REMARKS

Claims 12 to 17 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

As to page two (2) of the Office Action, claims 12 to 15 were rejected under 35 U.S.C. § 102(b) as anticipated by Lyons et al., U.S. Patent No. 5,826,216.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

Applicants respectfully traverse the rejections to claims 12 to 15. Claim 12 relates to a method for preventative protection of vehicle occupants in dangerous situations. The method of claim 12 recites the features of determining a distance of the vehicle to objects on a roadside on an ongoing basis according to size, determining whether the distance is less than a critical distance, initiating protective measures as a function of the determination, determining a host vehicle velocity by magnitude and determining the critical distance as a function of the determined host vehicle velocity.

It is respectfully submitted that the “Lyons et al.” reference does not anticipate claim 12, as presented, for at least the following reasons. Applicants respectfully submit that the “Lyons et al.” reference only refers to the extraction of a Doppler signal out of a radar signal. Using this Doppler signal, the range to an object is determined. A velocity measurement device 26 determines the relative velocity using the Doppler signal. Accordingly, the “Lyons et al.” reference does not identically disclose (or even suggest) the feature of disclosing a distance of the vehicle to objects on a roadside on an ongoing basis according to size.

Moreover, the “Lyons et al.” reference does not identically disclose (or even suggest) the feature of determining a host vehicle velocity by magnitude and determining the critical distance as a function of the determined host vehicle velocity. Applicants respectfully submit that determination of the host vehicle velocity would necessitate a signal of an ESP device or a speedometer. The “Lyons et al.” reference, however, does not identically disclose (or even suggest) this configuration and/or capability. Therefore, claim 12, as presented, is not anticipated by the “Lyons et al.” reference, since the reference does not identically disclose (or even suggest) these claim features.

Accordingly, claim 12, as presented, is allowable. Claims 13 to 15 depend from claim 12, as presented, and are therefore also allowable for the same reasons.

As to page three (3) of the Office Action, claims 16 and 17 were noted as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include all of the limitations of the base claim and any intervening claims. Applicants respectfully submit that claims 16 and 17 depend from claim 12 that itself, as presented above, is allowable. Applicants respectfully submit that claims 16 and 17 are therefore allowable.

In sum, claims 12 to 17 are allowable.

CONCLUSION

In view of the above, it is respectfully submitted that all of the presently pending claims 12 to 17 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, since they have been obviated. Since all issues raised have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,

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